

Public Record Exemptions

Under the open records law (IC 5-14-3), a public record must be disclosed in the absence of a provision exempting the record from disclosure. Mandatory exemptions require an agency to maintain the confidentiality of the record. Discretionary exemptions allow an agency to maintain the confidentiality of the public record. The primary list of these exemptions is in IC 5-14-3-4. However, there are many exemptions throughout the Indiana Code, both mandatory and discretionary, that deal with specific types of records and information.

(1) Mandatory exemptions. A public agency is prohibited from disclosing to the general public the following records and information.

[IC 5-14-3-3] Lists of names, addresses, and e-mail addresses of public employees, public school students, and state educational institution conference attendees or program participants may not be disclosed for political purposes or for commercial purposes.

[IC 5-14-3-6.5] An agency must maintain the confidentiality of a confidential public record received from another agency.

[IC 5-14-3-4] The following records and information may not be disclosed by an agency to the public unless specifically required by statute or court order:

- ▶ Records declared confidential by federal law, state statute, agency rule, or the Indiana supreme court.
- ▶ Trade secrets.
- ▶ Confidential financial information requested and obtained from a person, not including information received by an agency pursuant to state statute.
- ▶ Research conducted under the auspices of a state educational institution. Includes information about any relevant negotiations and received from another party involved in the research.
- ▶ Grade transcripts and license examination scores obtained as part of a licensure process.
- ▶ Patient medical records and charts created by a provider in the absence of the patient's written consent.
- ▶ Application information declared confidential by the Indiana economic development corporation board for a loan or grant from the Indiana 21st-century research and technology fund.

- ▶ Autopsy photographs or recordings. (Disclosure restricted to surviving spouse, surviving parents, an adult child, a government agency, or a coroner).
- ▶ Social Security numbers.
- ▶ Debtor's information (telephone, e-mail, and mailing address) and loss mitigation package as part of a foreclosure prevention agreement for a residential mortgage.
- ▶ Caller identity or other information regarding a call made to a local government fraud hotline. (Disclosure restricted to a law enforcement agency, the attorney general, the inspector general, the state examiner, or a prosecuting attorney.)

(2) Discretionary exemptions. A public agency may disclose or not disclose the following information to the general public.

- ▶ Law enforcement agency investigatory records. (Disclosure may be limited to victim advocates or a victim service providers.)

However, the following information maintained by a law enforcement agency must be disclosed [IC 5-14-3-5]:

The identity of an arrested or summoned person (name, age, and address), the charges, and the arrest circumstances (time, location, investigating or arresting officer or law enforcement agency).

The identity of a person received in a jail or lock-up (name, age, and address), the reason, the name of the person who ordered the person held, the time and date the person was received, discharged, or transferred, and the bail or bond amount.

Information from the agency's daily log of crimes, accidents, or complaints (time, substance, and location of complaints or assistance requests, time and nature of the agency's response). If a crime or infraction, the time, date, and location of occurrence, victim name and age (excluding sex crime victims), factual circumstances, and a general description of any injuries, property, or weapons.

- ▶ Work product of an attorney employed or appointed by the state or an agency.
- ▶ Licensing, employment or academic examination test questions, scoring keys, and other examination data.
- ▶ Test scores identified by name, if the person has not consented to the release.
- ▶ Records created while negotiations are in progress between industrial, research, or

commercial prospects and certain entities (the Indiana economic development corporation; the ports of Indiana; the Indiana state department of agriculture; the Indiana finance authority; the office of tourism development (see IC 5-14-3-4.8); an economic development commission; a local economic development organization, or a political subdivision).

Exceptions. An agency must disclose an incentive agreement (upon execution) and the terms of the final offer of public financial resources upon termination of negotiations with a prospect.

- ▶ Intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with an agency.
- ▶ Diaries, journals, or other personal notes.
- ▶ Files of applicants for public employment.
- ▶ Public employee personnel files.

Exceptions: [IC 5-14-3-4.3] The employee name, compensation, job title, business address and telephone number, job description, background, work experience, employment dates, status of any formal charges, and factual basis for suspension, demotion, or discharge must be released. However, a law enforcement agency is not required to release to the public the job title or job description of law enforcement officers.

- ▶ Minutes or records of hospital medical staff meetings.
- ▶ Administrative or technical information that would jeopardize a record keeping or security system.
- ▶ Computer programs, codes, filing systems, and other software owned by or entrusted to an agency. Electronic maps entrusted to an agency by a utility.
- ▶ Records prepared for or developed during discussion in an executive session.

However, information from employee personnel files may not be withheld under this subdivision.

- ▶ The work product of the legislative services agency under personnel rules approved by the legislative council.
- ▶ The work product of individual members and the partisan staffs of the general assembly.

- ▶ The identity of a donor of a gift made to an agency if nondisclosure is requested.
- ▶ Library or archival records that may be used to identify a library patron or that have been provided on the condition that disclosure is restricted to qualified researchers, to a certain timeframe, or after the death of specified persons.
- ▶ The identity of a person who contacts the bureau of motor vehicles (BMV) concerning the ability of a driver to operate a motor vehicle safely. Also medical records and evaluations made by BMV staff or the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely.
- ▶ School safety and security measures, plans, and systems, including emergency preparedness plans.
- ▶ A record that has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack, including assessments, infrastructure records, structural specifications, and contact information for public safety personnel.
- ▶ Telephone number, address, and Social Security number of a customer of a municipally owned utility.
- ▶ Telephone number and address of a complainant contained in records of a law enforcement agency, unless complainant's address is the location of the incident.
- ▶ Information regarding an undercover law enforcement officer (name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment).
- ▶ Records requested by an offender containing personal information of a correctional officer, law enforcement officer, judge, victim, or their family members, or that could affect the security of the correctional facility.
- ▶ Information (name, address, telephone number, e-mail address) of a participant in a state educational institution program who is less than 18 years old, or of the participant's parent or guardian.
- ▶ Criminal intelligence information. ("Criminal intelligence information" is defined in IC 5-14-3-2 as "data that has been evaluated to determine that the data is relevant to (1) the identification of; and (2) the criminal activity engaged in by; an individual who or organization that is reasonably suspected of involvement in criminal activity.")
- ▶ Information (birthdate, driver's license number, taxpayer or employer identification

number or account number) in an unclaimed property report or claim.

(3) Confidentiality exemptions located outside IC 5-14-3. The following is a small sample of provisions throughout the Indiana Code that designate records and information that an agency may not disclose to the public.

[IC 16-31-2-11] **Ambulance services.** Certain information contained in a pre-hospital ambulance rescue or report record regarding emergency ambulance services provided under a contract with an entity that is a public agency.

[IC 20-33-8-13.5] **Bullying.** A record made of an investigation of bullying, a disciplinary action, or a follow-up action performed under rules adopted by a school corporation.

[IC 5-2-9-6] **Protective orders.** The clerk of a court must maintain the confidentiality of information about a person who is the subject of a protective order.

[IC 5-26.5-2] **Address confidentiality program.** The office of the attorney general may designate an address to serve as the address of a person who is the subject of a protective order.

[IC 9-14-3-9] **Confidential motor vehicle record.** The BMV must maintain the confidentiality of the driver's license and motor vehicle registration of a motor vehicle used by a person employed by an agency performing confidential police work.

[11-13-3-4] **Parolees.** The address of the victim of a parolee who is a sex offender convicted of a sex offense is confidential.

[12-10-3-14] **Endangered adults.** Reports of neglect, battery, or exploitation to adult protective services and any other information or photographs may be disclosed only to certain authorized individuals.

[12-14-1-7] **TANF applicants, recipients.** A record identifying an applicant or recipient under the TANF program.

[IC 12-15-27-1] **Medicaid applicant, recipient.** An application, investigation report, information, or a record concerning a Medicaid applicant or recipient under the Medicaid program.

[12-17.2-3.5-19] **Injury report.** A child care provider's report to the division of family resources of bodily injury to a child that could be used to identify the child.

[12-23-18-5.6] **Treatment recipient.** Information that could be used to identify an opioid treatment program patient and that is contained in or related to the central registry of the opioid

treatment program.

[IC 31-30.5-1-5] **Custodial interrogation of a juvenile** is confidential at the discretion of the court.

[IC 31-33-18-1] **Child abuse, neglect.** Information, reports, or photographs in the possession of the department of child services and other agencies regarding child abuse or neglect.

[31-33-18-5] **Hotline calls.** An audio recording of a telephone call to the child abuse hotline is confidential and may be released only upon court order.

[31-39-1-2] **Juvenile court records.** All juvenile court records subject to IC 31-39-1 are confidential and are available only in accordance with IC 31-39-2.

[31-39-6-1] **School records.** A record compiled by school officials of preliminary inquiry regarding a child in need of services or delinquency of a child that occurs at a school.

[36-8-12-18] **Volunteer fire departments.** A volunteer fire department may declare personnel files and files of applicants to be confidential and not subject to public disclosure.